

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Jerry Cozby,

Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Ouellette, and Quality
Haulers, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Dean Alan Arender and Tamala Arender,

Plaintiffs,

vs.

Kent Huntley Oliver, Thompson Construction
Group, Inc., Curtis Kent Ouellette, and DMX
Transportation Services, Inc.,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Kent Huntley Oliver,

Plaintiff,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc.,
Dean Alan Arender, US XPRESS Leasing,
Inc., and US XPRESS, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

C/A NO.: 2022-CP-43-01006

ORDER

RECEIVED

MAY 03 2024

SC Court of Appeals

The matter before the Court is a motion for permissive joinder and consolidation filed by Defendants Kent Huntley Oliver and Thompson Construction Group, Inc. (hereinafter and collectively, "Thompson"). In the motion, Thompson requests the Court to join and consolidate two lawsuits pending in the Newberry County Court of Common Pleas with this lawsuit filed by Plaintiff Jerry Cozby ("Cozby"). Thompson seeks to join and consolidate the three cases for discovery and trial in the Sumter County Court of Common Pleas under the case number assigned to the Cozby action.

A hearing on Thompson's motion was held on October 9, 2023, with adequate notice provided to all parties in the affected cases. The Court heard argument from counsel for all interested parties, as set forth in more detail below. The Court has carefully considered Thompson's motion, all memoranda submitted by the interested parties, the arguments offered during the hearing, and the relevant law. For the reasons set forth below, the Court grants Thompson's motion.

BACKGROUND

All lawsuits referenced in this Order arise from a multi-vehicle accident that occurred on Interstate 26 near Jalapa, South Carolina on November 12, 2020. Four individuals were involved in the accident: (1) Jerry Cozby; (2) Curtis Ouellette, driving for Quality Haulers, Inc.; (3) Kent Huntley Oliver, driving for Thompson Construction Group, Inc.; and (4) Dean Arender, driving for U.S. Xpress, Inc. and/or U.S. Xpress Leasing, Inc. Since the accident, the following lawsuits have been filed:¹

¹ Great West Casualty Company, as subrogee of U.S. Xpress, Inc., filed a claim for property damages before the Newberry County Arbitration Panel. *See Great West Casualty Company v. Thompson Construction Group, Inc., et al.* C/A No. 2023-CP-36-00125. Thompson did not seek to join and consolidate that action in its motion. Accordingly, the Court does not address that action in this Order.

- *Cozby v. Oliver, et al.* (“Cozby Action”)
 - C/A No. 2022-CP-43-01006
 - Plaintiff: Jerry Cozby
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and Quality Haulers, Inc.
 - Venue: Sumter County Court of Common Pleas
- *Arender v. Oliver, et al.* (“Arender Action”)
 - C/A No. 2023-CP-36-00276
 - Plaintiffs: Dean Arender and Tamala Arender
 - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; Quality Haulers, Inc.; and DMX Transportation Services Inc.
 - Venue: Newberry County Court of Common Pleas
- *Oliver v. Ouellette, et al.* (“Oliver Action”)
 - C/A No. 2023-CP-36-00300
 - Plaintiff: Kent Huntley Oliver
 - Defendants: Curtis Kent Ouellette; Quality Haulers, Inc.; Dean Arender; U.S. XPRESS Leasing, Inc.; and U.S. XPRESS, Inc.
 - Venue: Newberry County Court of Common Pleas

On August 18, 2023, Thompson moved to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial under Case No. 2022-CP-43-01006, the number assigned to the Cozby Action.

As noted above, the hearing on Thompson’s motion was held on October 9, 2023. G. Murrell Smith, Jr. and Frederick N. Hanna, Jr. appeared on behalf of Thompson Construction Group, Inc. and Kent Oliver. E. Hood Dawson, III appeared on behalf of Defendants Curtis Ouellette and Quality Haulers, Inc. Ivey B. Franklin appeared on behalf of Plaintiff.

Counsel for additional parties in the Arender Action and the Oliver Action also attended the hearing and presented argument. Justin J. Arenas appeared on behalf of Kent Huntley Oliver. Jacob D. Born and James D. George, Jr. appeared on behalf of Dean Arender and Tamala Arender (hereinafter and collectively, “Arender”). Marshall C. Crane and Madison C. Killen appeared on behalf of U.S. Xpress Leasing, Inc. and U.S. Xpress, Inc. (hereinafter and collectively, “U.S. Xpress”).

ARGUMENT

In its motion, Thompson asks the Court to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial in the Sumter County Court of Common Pleas. Thompson advances three primary arguments in support of its motion. First, Thompson contends it would be proper for the Court to join and consolidate the cases because the requirements of Rules 20(a) and 42(a), SCRCP, are satisfied. Next, Thompson asserts that upon joining and consolidating the cases, venue would be proper in Sumter County. Finally, Thompson argues joinder and consolidation are in the best interest of the parties and the Court.

The primary opponents to Thompson's motion are Arender and U.S. Xpress. Although Arender and U.S. Xpress indicate they would be willing to consent to consolidation for discovery purposes only in Newberry County,² they oppose Thompson's request for joinder and consolidation for discovery and trial in Sumter County. U.S. Xpress contends it is improper for Thompson to seek both joinder and consolidation. Both Arender and U.S. Xpress argue joinder would be improper under the circumstances presented in the collective cases and that venue would be improper in Sumter County. Finally, Arender and U.S. Xpress argue joining and consolidating the cases for trial would be undesirable.

Before addressing these arguments, for sake of completeness, the Court notes the parties' respective positions on joinder and consolidation. Thompson, Oliver, Ouellette, and Quality Haulers, Inc. support Thompson's motion for joinder and consolidation for trial and discovery in Sumter County. Cozby, Arender, and U.S. Xpress oppose Thompson's motion, but would be

² On October 6, 2023, U.S. Xpress filed a motion to consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery in the Newberry County Court of Common Pleas.

agreeable to consolidation for discovery in Newberry County. The Court now addresses the substantive arguments of the parties.

I. Thompson's request for joinder and consolidation

In its motion, Thompson requested that the Court grant permissive joinder and consolidation of the cases under Rules 20(a) and 42(a), SCRPC. In response, U.S. Xpress contends Thompson's request for both permissive joinder and consolidation is improper. U.S. Xpress relies primarily on *Ellis v. Oliver*, in which the South Carolina Supreme Court discussed the differences between permissive joinder and consolidation. 307 S.C. 365, 367-68, 415 S.E.2d 400, 401-02 (1992) (explaining that pleadings are merged into one action under permissive joinder, but separate actions retain their own identity under consolidation).

During the hearing, counsel for Thompson clarified that Thompson only sought permissive joinder of the cases. In light of Thompson's decision to pursue permissive joinder only—not permissive joinder and consolidation—it is unnecessary for the Court to rule upon U.S. Xpress' argument. The Court only considers Thompson's request for permissive joinder in the remainder of this Order.

II. The requirements for permissive joinder are satisfied

Thompson requests permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action under Rule 20(a), SCRPC. Thompson contends that because the threshold requirements of Rule 20(a) are satisfied, the Court should exercise its authority and join the cases. Thompson contends it is desirable for the Court to do so for several reasons, which the Court will address below in Section IV of this Order.

Both Arender and U.S. Xpress contend it would be improper for the Court to join the cases under Rule 20(a). Arender and U.S. Xpress contend that because joinder under Rule 20 is

permissive rather than mandatory, Thompson cannot compel the Court to order joinder in this instance. Arender claims that because Thompson requests mandatory joinder, its arguments should be analyzed under Rule 19(a), SCRCP, which Arender contends is not applicable. U.S. Xpress further argues the requirements of Rule 20(a) are not satisfied because “the question of any negligence of Arender or [U.S. Xpress] is not ‘common’ to any party other than Oliver.”

Arender and U.S. Xpress’ arguments with respect to “mandatory” joinder rest on a mischaracterization of Thompson’s argument. Thompson plainly moved for “permissive joinder” under Rule 20(a) and never argued that joinder was mandatory. Indeed, Thompson never suggested that either the parties or the Court were required to join the claims in one action. Nor did Thompson assert any arguments based on Rule 19, SCRCP. Instead, Thompson simply requests that the Court exercise its discretion and join the cases because they arise from the same series of occurrences and share common questions of law and fact. Accordingly, the Court rejects Arender and U.S. Xpress’ suggestion that Thompson seeks “mandatory” joinder.

Although South Carolina’s courts have not frequently discussed Rule 20(a), the Court has broad discretion under that Rule to decide the scope of civil actions. *See Hedberg v. Darlington Cnty. Disabilities & Special Needs Bd.*, 133 F.3d 915 (4th Cir. 1997) (discussing district court’s discretion under Fed. R. Civ. P. 20(a), which is substantially similar to Rule 20(a), SCRCP). The Rule explains when parties may be permissively joined into one action:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to

their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20(a), SCRCP.

The Court agrees with Thompson that permissive joinder of the Cozby Action, the Arender Action, and the Oliver Action is permitted under the applicable framework. First, there is no question that each of these actions arises from the same “occurrence” or “series of . . . occurrences”—the November 12, 2020 multi-vehicle accident. Additionally, there is at least one question of law or fact common to each of the plaintiffs and defendants in the three cases. Each of the actions involves common questions of fact about the details of the accident (including the weather conditions surrounding the accident) and the extent of the parties’ damages. These actions also share questions of law relating to the parties’ respective negligence and causation.

U.S. Xpress’ argument that there is no shared question as to Arender and U.S. Xpress’ negligence is incorrect. First, even assuming that only Oliver had an interest in determining Arender and U.S. Xpress’ negligence, this argument misapplies Rule 20(a). Rule 20(a) does not require that *all* questions of fact or law be common to each of the parties; instead, it is sufficient if there is “*any* question of law or fact common” to the parties. Rule 20(a), SCRCP (emphasis added). In any event, Oliver is not the only plaintiff with an interest in determining Arender and U.S. Xpress’ negligence. Arender and U.S. Xpress’ negligence is also at issue in the Cozby Action, where defendants have asserted that Cozby’s injuries were caused by the fault of others, and in the Arender Action, where defendants have asserted comparative negligence defenses.

Therefore, the Court agrees with Thompson that the requirements of Rule 20(a) are satisfied, and the Court may exercise its discretion to join these cases.

III. Venue in Sumter County is proper

Thompson next contends that venue would be proper if the Court joins these cases for discovery and trial in Sumter County. According to Thompson, because the pleadings are merged after an order of permissive joinder, *see Ellis*, 307 S.C. at 367, 415 S.E.2d at 401, venue is proper in the county of residence of any defendant in the Cozby Action, the Arender Action, or the Oliver Action. *See* S.C. Code Ann. § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”). In further support of its request to join the cases in Sumter County, as opposed to a proposed consolidation in Newberry County, Thompson relies on the fact that it is the only Defendant that has been sued in its county of residence. Thompson contends it should not be deprived of its “substantial right” to a trial in its county of residence. *See, e.g., Carroll v. Guess*, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990).

Arender and U.S. Xpress offer different arguments for why Thompson’s position as to venue is incorrect. Arender perceives Thompson’s argument for venue in Sumter County as an attempt to change venue under section 15-7-100(A). Arender asks the Court to deny Thompson’s request for a change in venue because Thompson cannot demonstrate “the convenience of witnesses and the ends of justice would be promoted by the change.” *See* S.C. Code Ann. § 15-7-100(A)(3).

U.S. Xpress, on the other hand, contends venue would be improper in Sumter County because the Oliver Action could not have been brought in Sumter County. U.S. Xpress further argues that after the 2005 amendments to the venue statute, a plaintiff has a right to bring suit either in the venue where a defendant resides or where the most substantial part of the act or omission occurred. *See* S.C. Code Ann. § 15-7-30.

The Court agrees with Thompson that venue for the joined cases is proper in Sumter County. As Thompson notes, an order of permissive joinder merges previously separate actions into one. *See* Rule 20(a), SCRCP; *see also Ellis*, 307 S.C. at 367, 415 S.E.2d at 401 (discussing the difference between an order of consolidation and an order of permissive joinder). Therefore, for venue purposes, the residency of each defendant in each of the merged actions is considered. *See* S.C. Code Ann. § 15-7-30(B); *see also Ellis*, 307 S.C. at 367 n.2, 415 S.E.2d at 402 n.2. Because Thompson is a resident of Sumter County, venue for these joined actions is proper in Sumter County. *See* S.C. Code Ann. § 15-7-30(E) (stating an action tried against a domestic corporation must be brought and tried in the county in which the corporation has its principal place of business or where the most substantial part of the alleged act or omission occurred); § 15-7-30(B) (“If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.”).

Contrary to U.S. Xpress’ position, the fact that the Oliver Action could not have been brought in Sumter County does not change the analysis. This argument overlooks the impact of an order of permissive joinder, which merges the previously independent actions into one. Accordingly, the relevant task is not to determine where venue would properly lie for each of the independent actions; the proper question is where venue properly lies for the merged actions. As the foregoing discussion demonstrates, venue for the merged actions is proper in Sumter County.

The Court also rejects Arender’s arguments under section 15-7-100. Although the Court’s Order effectively changes the venue of the Arender Action and the Oliver from Newberry County to Sumter County, the Court’s Order is not based on section 15-7-100. Indeed, Thompson does not seek a change in venue based on the convenience of witnesses and the ends of justice. Thompson simply seeks to join the cases into one in Sumter County, which it contends is a proper

venue under section 15-7-30. Because the Court is not faced with a motion under section 15-7-100, the Court need not consider Arender's argument respecting the most "convenient" forum for these cases to be heard.

Finally, the Court finds that Cozby's decision to sue Thompson in its county of residence is significant to the venue analysis. Because these actions were filed in different counties, Thompson's request for joinder necessarily requires a change of venue for either the Cozby Action or the Arender Action and the Oliver Action. Although Arender and U.S. Xpress desire for these cases to be consolidated in Newberry County, the Court agrees that Thompson has a substantial right to be tried in its county of residence. Contrary to U.S. Xpress' argument, the 2005 amendments to the venue statute did not impact that right, as recognized by the South Carolina Supreme Court in a decision shortly after the amendment. *See Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 442, 633 S.E.2d 143, 147 (2006) ("The defendant has a substantial right to be tried in the county of his residence pursuant to S.C. Code Ann. § 15-7-30 (2005)."). Thompson's substantial right to be tried in Sumter County vested when Cozby elected to bring suit there. Importantly, no other defendants in any of these cases were sued in their county of residence. Accordingly, Thompson's right to defend the Cozby case in Sumter County further supports the Court's decision to join these cases in Sumter County.

IV. Joinder is desirable for the parties and the court

Lastly, Thompson asks the Court to join these cases for discovery and trial because it has demonstrated that doing so would be desirable. Thompson contends joining the cases would prevent duplicative litigation, save the parties from incurring unnecessary costs, and conserve judicial resources. Thompson also contends joining the cases would eliminate the risk of a judgment in one case having preclusive effect in all other cases. *See, e.g., Sims v. Amisub of S.C.*,

Inc., 408 S.C. 202, 209, 758 S.E.2d 187, 191 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (noting the doctrine of collateral estoppel “prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same”).

In response, Arender and U.S. Xpress contend the cases should not be joined for trial. Relying on the Restatement (Second) of Judgments § 29, Arender contends offensive collateral estoppel is not a realistic concern in these cases. U.S. Xpress argues these actions are not appropriate for joinder because a single trial would involve numerous claims and parties and would be difficult for jurors to understand. U.S. Xpress also claims it would be improper to join these actions under the case number assigned to the Cozby Action because it is the oldest case and will be subject to trial before the parties can adequately prepare.

The Court agrees with Thompson that joinder for both discovery and trial is justified under the circumstances presented in these cases. Plainly, it will be less burdensome for all parties and the Court to join these proceedings. Joinder will reduce cost to the parties, conserve judicial resources, eliminate the need for repetitive discovery, reduce the burden on witnesses, and prevent inconsistent judgments. To put it simply, it would be incredibly inefficient to litigate these claims separately.

Additionally, as Thompson argues in its motion, joinder will eliminate the risk of collateral estoppel applying to prevent adjudication on the merits. The South Carolina Supreme Court has recognized that the offensive use of nonmutual collateral estoppel may be appropriate in certain circumstances. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). Arender contends this concern is not legitimate, as the Restatement provides that a person seeking to invoke favorable preclusion may not do so if he could have

effected joinder in this first action. *See* Restatement (Second) of Judgments § 29(3). Regardless of whether that exception would apply to prevent offensive collateral estoppel, the safest course at this stage is to join the actions and thereby eliminate the risk of judgments having preclusive effect.

Furthermore, the Court is not persuaded by U.S. Xpress' arguments about a single trial being confusing for jurors to follow. Lawyers and judges in this State frequently try cases involving numerous claims and parties. The Court finds the benefits of joinder outweigh any concerns associated with a single trial. In any event, should U.S. Xpress' concerns prove legitimate as trial approaches, Rule 20(b) provides the Court with flexibility to ensure an efficient trial process. Rule 20(b), SCRCP ("The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.").

Finally, U.S. Xpress' argument respecting the age of the Cozby Action is without merit. As noted above, U.S. Xpress opposes joining these cases around the Cozby Action because it is the oldest case and may be called for trial before the parties have time to conduct necessary discovery. This dilemma can easily be resolved by the parties entering into a scheduling order. The parties will not be forced to a trial before they have had time to perform adequate discovery.

[Space intentionally left blank]

CONCLUSION

For the foregoing reasons, the Court grants Thompson's motion and joins the Cozby Action, the Arender Action, and the Oliver Action around Case Number 2022-CP-43-01006, the number assigned to the Cozby Action.

IT IS SO ORDERED.

The Honorable R. Kirk Griffin
Circuit Court Judge

February __, 2024
Sumter, South Carolina



Sumter Common Pleas

Case Caption: Jerry Cozby VS Kent Huntley Oliver , defendant, et al

Case Number: 2022CP4301006

Type: Order/Consolidate

So Ordered

s/ R. Kirk Griffin 2768